

WILLIAM J. RITA, ESQ.

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August 13, 2020

VIA ECF

Honorable Kiyo A. Matsumoto
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

RE: Maya v. Leader Auto Group LLC, et al
Case# 1:19- cv-05801-KAM-JO

Dear Judge Matsumoto,

This office is in receipt of a second order dated 8/13/20 with transaction entered at 4:26 pm ordering this office to take action in less than 24 hours in regard to an individual who is not my client and is not a party in the above captioned proceeding.

In the interest of due process, I respectfully request an extension of time to afford the widow or successor in interest that the Court has ordered to communicate with on August 17, 2020 at 11:00 am, an opportunity to retain counsel should the widow or the representative of the Estate of Morris Mayo choose to do so.

I received a phone call from your Law Clerk Grace, after 4:26 pm today, indicating that I can make an application for an extension of time which I am doing with this letter.

I attempted to explain to your law clerk, that the timing of the August 4, 2020 entered order transmitted to me at 4:49 pm predated notification to my office of the filing of the August 4, 2020 letter/ motion by defendant's counsel by nearly 3 hours.

Attached as **Exhibit A** is the order I received at 4:49 pm from ECF on August 4, 2020. Attached as **Exhibit B** is the letter sent to me by defendant's counsel at 7:37 pm on August 4, 2020 which was the first time I became aware that the Court had received a letter/ motion from defendant's counsel in this matter.

Thus, on August 4, 2020. I was given no opportunity to respond prior to the entry of an order that appears to be on its face in contravention of FRCP 25(a) (1) which provides that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

In this action Judge Orenstein entered an order on May 6, 2020 pursuant to FRCP 25 (a) (1) that provided that the suggestion on the record of the plaintiff's death requires either a successful motion for substitution by the decedent's representative of successor by August 3, 2020 or, if no such motion is made dismissal.

No motion for substitution was made herein and no appeal was taken from Judge Orenstein's order.

For these reasons, it is respectfully requested that there be a 30-day extension of Time from which the Court has ordered a nonparty to this proceeding to participate in a telephone conference until September 17, 2020 to afford the representatives of the estate of Morris Mayo to become aware of this Court's actions since the prior law of the case dismissal date of August 3, 2020. Further, this Court now seeks additional information unbeknownst to anyone prior to entry of the August 4, 2020 order.

Pursuant to FRCP 25 (a) (1) and Judge Orenstein's May 6, 2020 order this office notified the Court on August 6, 2020 of consent to dismissal of this action pursuant to FRCP 25 (a) (1).

It is respectfully requested that an extension of time until September 17, 2020 is appropriate for the decedent's successor or representative in interest to respond to this Court's directives which were not contemplated in the record prior to the law of the case dismissal date of August 3, 2020 pursuant to Judge Orenstein order on May 6, 2020.

Thank you for your consideration.

Respectfully Submitted,

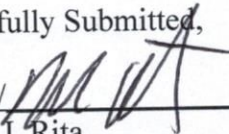
/s/ 
William J. Rita

Exhibit A

From: ecf_bounces@nyed.uscourts.gov,
To: nobody@nyed.uscourts.gov,
Subject: Activity in Case 1:19-cv-05801-KAM-JO Maya v. Leader Auto Group LLC et al Order on Motion to Dismiss
Date: Tue, Aug 4, 2020 4:48 pm

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 8/4/2020 at 4:48 PM EDT and filed on 8/4/2020

Case Name: Maya v. Leader Auto Group LLC et al

Case Number: 1:19-cv-05801-KAM-JO

Filer:

Document Number: No document attached

Docket Text:

ORDER temporarily denying without prejudice [20] Motion to Dismiss filed by defendants. The court denies without prejudice the defendant's motion to dismiss. Before the court exercises its discretion to dismiss this action, the court orders that the deceased Plaintiff's counsel, Mr. William Rita, respond to the defendant's motion and to the court's ORDER as directed herein. Mr. William Rita remains counsel of record and has not moved the court nor obtained leave to be relieved as counsel in the manner required by the EDNY Local Civil Rule 1.4. Instead, Mr. Rita has directed defense counsel to communicate with another attorney, Liz Foster, Esq., who has not filed a notice of appearance and has not been substituted as counsel. Mr. William Rita and his purported co-counsel, Ms. Liz Foster, are ORDERED to advise the court NO LATER THAN FRIDAY, AUGUST 7, 2020, of their efforts to ascertain from the deceased plaintiff's wife whether a representative of the deceased plaintiff's estate will be substituted for the plaintiff pursuant to Fed. R. Civ. P. 25, or whether the decedent's representative will dismiss this action. Whether the decedent's representative intends to proceed with this action or dismiss this action, the representative must so state in a letter to this court. Plaintiff's counsel of record is reminded of his professional and ethical obligations to his client and/or his client's estate and of his duty to comply with the orders and rules of this court. FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN SANCTIONS AGAINST PLAINTIFF'S COUNSEL. Defense counsel is requested to confirm with Mr. Rita and Ms. Foster that they have received this order and to advise the court no later than Wednesday, 8/5/20 of the outcome of defense counsel's efforts. Ordered by Judge Kiyo A. Matsumoto on 8/4/2020. (Matsumoto, Kiyo)

1:19-cv-05801-KAM-JO Notice has been electronically mailed to:

Keith J. Gutstein kgutstein@kdvglaw.com

William J. Rita nycbanklaw@aol.com

<https://mail.aol.com/webmail-std/en-us/PrintMessage>

Exhibit B

From: erosenblum@kdvlaw.com,

To: Nycbanklaw@aol.com, liztlaw@gmail.com,

Cc: kgutstein@kdvlaw.com,

Subject: FW: Activity in Case 1:19-cv-05801-KAM-JO Maya v. Leader Auto Group LLC et al Order on Motion to Dismiss

Date: Tue, Aug 4, 2020 7:37 pm

Attachments: Letter Motion.pdf (117K), Exhibit A.pdf (314K), Exhibit B.pdf (199K),

Bill and Liz:

Attached please find the letter motion that we submitted to the Court today requesting dismissal of the action as a result of your failure to comply with the May 6, 2020 Court Order. In accordance with the Court Order dated August 4, 2020, I am forwarding email correspondence below to you to ensure that it was received. Please confirm. Thank you.

Regards,

Erika

Erika Rosenblum

Attorney at Law



KAUFMAN DOLOWICH VOLUCK

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ATTORNEYS AT LAW

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Erika H. Rosenblum, Esq.
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August 5, 2020

VIA ECF

Judge Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Morris Maya v. Leader Auto Group LLC and Jordan Daiagi
Index No.: 19-cv-05801 (KAM)(JO)

Dear Judge Matsumoto:

This office represents Defendants, Leader Auto Group LLC and Jordan Daiagi (collectively, "Defendants") in the above-referenced matter. In accordance with the Court Order dated August 4, 2020, please allow this correspondence to serve as a report on our discussions with Plaintiff's counsel regarding the status of this action.

As directed, we sent Mr. William Rita and Ms. Elizabeth Foster a copy of the August 4, 2020 Court Order. This morning we received a call from Mr. Rita, counsel of record for Plaintiff, who advised, in sum, that he plans to submit a letter to the Court by Friday, August 7, 2020 stating that he does not oppose the dismissal of this action. Mr. Rita further advised that because he does not oppose dismissal of the action, a motion for substitution and/or any other correspondence with the Court was not necessary pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure in order for the case to be dismissed. Attached hereto as Exhibit A please find email correspondence between this office and Mr. Rita, which confirms the substance of their telephone call. We have not received any response from Ms. Foster.

We thank the Court for its attention to this matter.

Respectfully yours,
Kaufman Dolowich & Voluck, LLP

Keith Gutstein
Erika Rosenblum

cc: All Counsel, by ECF
4835-5842-9383, v. 1

Exhibit A

Erika Rosenblum

From: Erika Rosenblum
Sent: Wednesday, May 6, 2020 10:13 AM
To: William J Rita; Elizabeth Foster
Cc: Keith Gutstein
Subject: Fwd: Activity in Case 1:19-cv-05801-KAM-JO Maya v. Leader Auto Group LLC et al Order on Motion for Extension of Time to Complete Discovery

William and Liz:

Below please find a bounce we received this morning denying the joint request to extend discovery in the above-referenced matter. Please advise how you are going to proceed with this case ASAP.

Thank you,
Erika

Erika Rosenblum
Attorney at Law



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From: ecf_bounces@nyed.uscourts.gov <ecf_bounces@nyed.uscourts.gov>
Sent: Wednesday, May 6, 2020 9:44 AM
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 1:19-cv-05801-KAM-JO Maya v. Leader Auto Group LLC et al Order on Motion for Extension of Time to Complete Discovery

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 5/6/2020 at 9:42 AM EDT and filed on 5/6/2020

Case Name: Maya v. Leader Auto Group LLC et al

Case Number: 1:19-cv-05801-KAM-JO

Filer:

Document Number: No document attached

Docket Text:

ORDER denying [19] Motion for Extension of Time to Complete Discovery -- Counsel may not seek relief on behalf of a party who has died. Instead, the suggestion on the record of the plaintiff's death requires either a successful motion for substitution by the decedent's representative or successor by August 3, 2020 or, if no such motion is made, dismissal. See Fed. R. Civ. P. 25(a). I therefore deny the motion without prejudice to a timely request for similar relief by a successor plaintiff, should any be named. Ordered by Magistrate Judge James Orenstein on 5/6/2020. (Walker, Anna)

1:19-cv-05801-KAM-JO Notice has been electronically mailed to:

Keith J. Gutstein kgutstein@kdvglaw.com

William J. Rita nycbanklaw@aol.com

Erika Hannah Rosenblum erosenblum@kdvlaw.com

1:19-cv-05801-KAM-JO Notice will not be electronically mailed to: